

JAN 29 2004



December 12, 2003

US Department of State  
CA/OCS/PRI  
Adoption Regs. Docket Room SA-29  
2201 C Street NW  
Washington, DC 20520

RE: Docket State /AR-01/96

To Whom It May Concern:

Enclosed please find two (2) copies of electronic submissions from Lutheran Services in America/ Lutheran Adoption Network with comments to the Hague Intercountry Adoption Regulations, 22 CFR Part 96.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Susan Myers', is written over the typed name.

Susan L. Myers  
Director, Lutheran Adoption Network.

cc: Jill Schumann, President & CEO, LSA

JAN 29 2004

**COMMENTS TO HAGUE REGULATIONS**  
**Submitted by Lutheran Adoption Network (LSA)**

**22CFR Part 96; Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000**

**TO: Department of State**  
**CA/OCS/PRI**  
**Adoption Regulations Docket Room SA-29**  
**2201 C Street NW**  
**Washington DC 20520**  
**(Electronically submitted to [adoptionregs@state.gov](mailto:adoptionregs@state.gov))**  
**RE: State/AR-01/96**

**Introduction and Profile**

The Lutheran Adoption Network (LAN) is a national collaboration of 29 Lutheran social ministry organizations that are active in international adoptions and who are members of Lutheran Services in America (LSA). Our mission is "to provide high-quality adoption services utilizing a network of Lutheran agencies". We have both local or direct service agencies and international placement agencies within the network. The LAN members have a shared reputation for integrity and ethical practices in adoption, as well as extensive history. Many of these agencies have been in business for over 100 years. As a faith-based network, we are motivated to service on behalf of those without a voice -- children who need permanent families-- and a commitment to honesty and professionalism in our work with families is our hallmark.

The members of the Lutheran Adoption Network wish to extend our thanks and compliments to the Department of State for its work on writing the regulations which will implement the Intercountry Adoption Act of 2000 and the Hague Convention. We know this has been long needed in the United States and we support the concept of improving the intercountry adoption process for all members of the adoption triad as well as for adoption professionals. Lutheran Adoption Network members collectively support the principles of the Convention and the IAA: to protect the rights of and prevent abuses against children, birth families, and adoptive parents involved in intercountry adoptions subject to the Convention, and to ensure that such an adoption is in a child's best interests, and to improve the ability of the Federal government to assist US citizens seeking to adopt children from abroad. We are grateful for the opportunity to give feedback and comments to the Department of State regarding the proposed regulations.

## Comments and Recommendations on the Regulations:

### **Preamble, p. 54079 -80 "Recognition of currently accredited agencies"**

The decision to **not permit** "deeming" for agencies who have voluntarily undergone accreditation with COA (the only existing voluntary private accrediting body for intercountry adoption services) raises many concerns for LAN members. While the State Department asserts that "its regulatory standards differ substantially from other standards..." in reality the COA intercountry adoption standards have a great deal of duplication with current proposed standards. The duplication has been measured by some agencies to be around 80%. To require these agencies to undergo another accreditation process is a waste of precious time and limited resources. A recommended solution is "partial deeming" or "credit" for standards which are found to be "sufficiently similar" given to agencies that currently hold intercountry adoption accreditation. Agencies already accredited for intercountry adoption should be able to be recognized for this and then required only to become further "Hague accredited" in the areas which are not sufficiently similar.

### **96.45 / 46 Using Supervised Providers in the US and in other countries**

These rules are of great concern because of current language in relation to risk management 96.45(c) 1-2 that requires the primary provider of adoption services to assume "tort, contract and other civil liability for the foreign supervised provider" as well as the supervised provider (also known as the direct service agency) in the United States. The primary provider must also have a bond, escrow account or liability insurance sufficient to cover the associated risks of supervising these entities. Compliance with this regulation would force the primary provider agency to raise adoption fees to cover its dramatically increased insurance costs (see section 96.34). It is well known that agencies have great difficulty controlling the behavior of foreign entities, whether they work "for" the agency or for a government body. It is totally unrealistic to expect Primary agencies to assume legal responsibility for the actions of providers in other countries.

Parents will have "legal recourse against a single entity" now and we understand that was the intent of this rule. However the prohibition against using a hold harmless agreement or general waiver of liability (see 96.39 below) will have a huge impact on the issue of the incredible exposure and risk the Primary agency will have to assume. It is possible that many reputable agencies will be forced to cease providing international adoption services because a.) they won't be able to obtain the insurance and b.) the potential threat of just one wrongful adoption suit will cause their governing Board to recommend discontinuing work in such a high-risk area.

### **96.33 Budget, audit and insurance requirements**

The LAN members agree and support the premise that agencies or persons operate under a budget approved by the governing body, and that the agency has safeguards in place to ensure that donations do not influence child placement decisions in any way. However, we believe that smaller organizations (defined as revenue under \$500K) should be able to conduct a review of financial statements in lieu of a full audit, which is more expensive and requires more staff time and resources. Copies of this financial review should be accepted by the accrediting entity.

**96.33(e)** We would ask that this state that agencies could have 3 months of cash reserves OR equivalent assets to cover their operating expenses.

**96.34(h)** Carrying professional liability insurance is appropriate and the LAN members support this requirement, but it may be impossible for some agencies to obtain in current climate. Additionally, \$1 million per incident may be too costly for smaller agencies thus either adding costs for adoptive parents, or eliminating those agencies altogether. The rules as written in 96.45, requiring the Primary agency to assume responsibility for all the acts of the direct service or local agency as well as the foreign partners, will also directly impact the ability of agencies to find insurance carriers who will underwrite them. We would like to suggest that the amount of coverage be lowered, especially since there is no dollar amount specified by the IAA or the Convention. If this cannot be done, LAN would like to request that language be added stating the agency may document attempts to obtain liability insurance which have been unsuccessful and then apply for a waiver of this requirement.

### **96.35 (b)3 Suitability of agencies and persons to provide adoption services consistent with the Convention**

We would like to request that the words "for the provision of adoption-related services" be inserted in this sentence which currently requires the accreditor to review: "Any licensing suspensions for cause or other negative sanctions by oversight bodies against the agency or person, including the basis and disposition of such actions". Since most of our agencies provide multiple services in addition to adoption, this regulation as worded might cause the accrediting entity to review all negative sanctions against a multi-service agency including areas having nothing to do with the quality of the adoption program.

### **96.37 Education and Experience Requirements for social service staff**

We can support the requirement for education and experience in intercountry adoption particularly for Supervisors, however we have concern about requiring case workers or social workers conducting homestudies in Convention cases to also have a Master's degree. Requiring workers who conduct homestudies to have Master's degree will increase operating costs for agencies. Hiring and retaining MA/MSW social workers is a continuing challenge for agencies, particularly in rural areas of our country. It is common current practice to have certified social workers (BA level) conduct studies under supervision from MSW or other Master's level staff, and under the new regulations the study must be approved by the Primary Provider anyway (Master's level director). We would respectfully request that this section be changed to state that the worker who conducts homestudies may have a Bachelors' degree from an accredited program of social work education AND be supervised by a Master's level social work supervisor.

### **96.39 (d) Information Disclosure and quality control practices**

This regulation does not define "blanket waivers of liability". We assume the term refers to an extremely general open-ended waiver of responsibility for outcomes. Current practice for LAN agencies is to use a well-written hold harmless and specific release from liability clause in their contracts with pre-adoptive parents. (See example appended of one such contract used by LAN member agency). There have never been and never can be any guarantees in adoption, and well trained and prepared parents understand this maxim. The regulation ignores this "standard" and would open the door for frivolous legal claims against agencies for issues which the agency cannot control or defend against. It is neither possible nor advisable to start giving warranties with child placements. Adoptive parents accept the risk that their child may have issues or challenges as they grow that could not be known about from the beginning, just as other parents accept this with birth children. The regulation currently proposed eliminates the ability for an agency to share risk with adoptive parents by providing them with information on all known risks in adoption and then asking them to make an informed decision to proceed. We would like to see a definition of "blanket waiver of liability" and recognition that specific waivers, with statements of risk, are appropriate for adoptive parents and for agencies.

### **96.40 Fee Policies and Procedures**

LAN is in agreement with the majority of these regulations specifically requiring agencies to provide written fee schedules of ESTIMATED intercountry adoption expenses, refunds and timing and method of payment. We also appreciate the detailed list of categories of fees that adoptive parents can expect to pay throughout the adoption process ((b) 1-7. There are frequently differences in the way agencies describe their fees and families can be confused. This streamlined structure will help clarify and explain the fee process for clients.



#### **96.41 Procedures for responding to complaints and service delivery**

We would like the regulations to distinguish between general complaints, which many families have at different stages in their adoption process, and grievances, which we see as more serious issues that are reported to the agency and to the accrediting body, etc. Most agencies have a "grievance process" that clients can go to for legitimate and serious concerns, and this should be replicated in the Hague regulations. There is too much room for interpretation over what a "complaint" could be (the term is undefined). Parents routinely give feedback, sometimes constructive and sometimes not, to the agency in the form of complaints about different aspects of the international adoption process. We believe the term "complaint" refers to the common legal usage in this section, but would like to see better definition and/or substitution of the term "grievance" as that reflects current practice.

#### **96.50 and 96.51 Post-Placement Monitoring and Post-Adoption Services**

In the initial Definitions section, there are no definitions provided for either Post-Placement OR Post-Adoption Services, and we believe this is crucial to further understanding of the provisions in 96.50 and 96.51. Homestudy providers are typically expected by Primary or Placing agencies to provide postplacement or postadoption services, but "post adoption services" are not listed as one of the 6 adoption services, thus agencies who provide them are exempted from Hague compliance. They are vital to the success of the placement and the outcome for the adopted child, and we are concerned that little attention is paid to post-adoption (defined as services to the family after the full and final adoption abroad, including but not limited to supportive counseling, developmental screening, parent education, and reports required by the country of origin). In contrast, more attention seems to have been paid to "post-placement monitoring until final adoption" but in reality these cases comprise only a small percentage of the intercountry adoptions completed every year. We would like to request that *both* "postplacement monitoring" and Postadoption Services be listed as one of the 6 adoption services.

#### **96.54 Placement Standards in Outgoing Cases (child leaving the US for adoption)**

(a)1, 2 We have concerns over the length of time child needs to be listed on a US registry for placement in-country. Currently many infants of color are adopted into Canada from the US and there is a concern that the Hague regulations will make these children wait longer for permanency. This section suggests minimum of 30 days after birth of child to be listed on registry and **except** for cases of relative adoption or identified adoption (birthparents choose family) the agency must document all reasonable efforts to find an American family for child. Not all of the children who may be adopted outside the US will be newborns.

This section in general is vague, and should have more definition and clarification. What about children who are not newborns... Will the process and time frame be the same? This needs to be defined. These children are already in the foster care system thus have been waiting and most likely are already legally freed for adoption in their state. If a

qualified family can be found for them outside the US we would not want their adoptions to be delayed by any additional bureaucracy.

**96.7 Authorities and responsibilities of an accrediting entity**

a. (8) The function listed here, assisting in transfer of adoption cases of agencies or persons that cease to provide or are no longer permitted to provide adoption services, should not be designated to the accrediting entity because it would require the accreditor to choose from one of the agencies they have accredited. This is generally felt to be an inappropriate role for the accrediting body. The transfer of cases should be handled by the State licensing entity with the input of the prospective/adoptive parents, and consultation from the former agency.

**96.92 Dissemination of information to the public about complaints against accredited agencies and approved persons**

The regulation states that the accrediting entity will disclose information upon request about both *substantiated* and *unsubstantiated* complaints lodged against an agency or person. Our opinion is that the public should only see complaints or "grievances" which have been substantiated, as the very definition of "unsubstantiated" means the complaint was unjustified. The accrediting entity should be prohibited from disclosing information about the status of a complaint filed to any person *other than* the complainant and the provider who is named in the complaint. The release of unsubstantiated information will promote rumors, speculation and negative perceptions of adoption providers by the public. We would like to ask that this provision be rewritten accordingly so that the effect intended is achieved without unfair prejudice against the agency in question.



Lutheran Social Services  
of Wisconsin and Upper Michigan, Inc.

Madison Office  
5 Odana Ct.  
Madison, WI 53719  
Adoption Support  
608/270-6603  
FAX 608/270-6651

LUTHERAN SOCIAL SERVICES OF WISCONSIN AND UPPER MICHIGAN

RUSSIAN PROGRAM, CHUVASHAYA REGION

GENERAL STATEMENT OF ACCEPTANCE AND RESPONSIBILITY

We \_\_\_\_\_ have received the referral of \_\_\_\_\_ through Lutheran Social Services of Wisconsin and Upper Michigan, Inc. (LSSWIS) from Russia. Our child/children's new name will be \_\_\_\_\_. In accepting this referral, we acknowledge and have read carefully the following:

1. GENERAL

1.1 We acknowledge that we will work together with LSSWIS to provide us with an opportunity to create a family or enhance our family through adoption. We commit to provide our child/children with a loving, nurturing, stimulating environment in which to grow and thrive, and a knowledge and appreciation of his/her/their country and culture of origin.

1.2 We understand that, although LSSWIS approves us for adoption, this placement must also be approved by the United States Immigration and Naturalization Service (INS), US Courts and Interstate Compact, where required, overseas referral source, overseas courts and officials, and the American Embassy in the country of origin. We acknowledge that any one of these persons or entities could deny our adoption. We further acknowledge that LSSWIS cannot be held responsible for unforeseen events which may occur in, or which are initiated by, the country of origin, overseas referral source or US Government requirements. This may also include world events that may effect our adoption. Therefore, we acknowledge that LSSWIS cannot guarantee the completion of this adoption.

1.3 We acknowledge that all fees paid to LSSWIS, its agents or independent contractors or other entities overseas, are for services rendered; they are not payment for a child. All fees paid to LSSWIS are non-refundable. We further acknowledge that LSSWIS is not responsible for any fees set by other person(s) or entities, either in the US or in the overseas country. LSSWIS does not receive, and cannot guarantee, the refund of any expenses/fees/costs paid by us to any individual, organization or other entity involved in this adoption.

1.4 We acknowledge that LSSWIS works cooperatively with local agencies and INS approved social workers in the US for home study and post placement services as well as individuals, organizations and government entities overseas. The overseas placement program involves working with, but is not limited to, childcare institutions, doctors, adoption facilitators and/or independent contractors. We acknowledge that LSSWIS cannot be held responsible for the actions of any other party in any adoption proceeding.

1.5 During the adoption process, we agree to not make any contact, either personally nor through a third party, with any individual or entity in the overseas country which includes, but is not limited to, independent contractors, coordinators, orphanage or medical personnel, government officials or the American Embassy unless specifically instructed by LSSWIS.

1.6 We acknowledge that we will be responsible for, but are not limited to, any and all medical, psychiatric or counseling expenses, child care, legal or miscellaneous expenses for our child/children commencing at the earliest time, either when we accept physical custody in the country of origin or his/her/their departure from the country of origin and continuing thereafter.

Motivated by the compassion of Christ,  
we help people improve the quality of their lives.



1.7 We acknowledge that we are solely responsible for paying all fees and costs involved in my/our adoption including, but not limited to, home study/supervision fees, LSSWIS fees, overseas fees, transportation fees, travel expenses including individual airfares, accommodations including lodging and food, internal travel costs, INS and court fees and any other expenses relating to our adoption.

1.8 We acknowledge that when we travel to Russia, we are representing not only our family but LSSWIS, the United States and future adoptive parents. We will act in a respectful, ethical and courteous manner so as not to damage the reputation of LSSWIS, its independent contractors nor the future of adoptions from that country.

## 2. PREPLACEMENT

2.1 Before accepting the referral of this/these children, we have read, understood and accepted the child referral information provided by LSSWIS. We have shared the child referral information with our pediatrician, international medical expert, developmental or any other specialist pertaining to our child's/children's specific medical needs, where appropriate. We acknowledge that LSSWIS, its agents or independent contractors will not personally conduct any assessment, evaluation, testing or background investigation of this child/children, but instead must rely on information provided by the overseas referral source, organization or institution with custody of the child/children.

2.2 We will cooperate fully with LSSWIS for the completion of our adoption which may include, but is not limited to: (1) completing all applications, forms and documents required to complete, facilitate and finalize the adoption in a timely manner; (2) reading educational material to familiarize ourselves with the issues of transracial, where appropriate, and cross cultural placements, the availability and level of child and medical care in the country of origin, developmental, emotional, and psychological issues, the effects of institutionalization and maternal abuse of alcohol, where appropriate, fetal alcohol syndrome/fetal alcohol effect, disrupted home life, physical and sexual abuse, poor or inadequate nutrition, and the issues affecting the medical, mental, physical and social development of children from Russia, where appropriate, plus the issues, reality and risks of international adoptions; (3) disclosing accurately and truthfully to the best of our ability, all information requested during the application for adoption, home study and supervision, and adoption process; (4) signing documents overseas as required by local officials or to satisfy local requirements.

## 3. POST PLACEMENT

3.1 It is our responsibility to take our child/children to a medical facility immediately following arrival if the child/children's condition warrants it and to continue to provide appropriate medical, psychological and dental care according to the child's/children's age and condition. We will provide our child with educational opportunities at the level of accepted standards for our state.

3.2 We acknowledge that LSSWIS requires a minimum of 6 sharing sheets from our home study/post placement services agency or an approved social worker. We also acknowledge that the country of origin may require additional supervision reports. We will cooperate fully including providing appropriate family and individual pictures of our child/children. We shall also cooperate with a request for family reports and pictures following the required post placement services of three years if a request is made from Russia.

3.3 Where LSSWIS continues to have a legal relationship with our child/children, we will notify LSSWIS immediately of any significant changes in our child's/children's medical condition, including physical or sexual abuse, family situation including residential moves and/or phone number, pregnancy, serious illness of either parent, loss of employment for principal provider, separation, divorce or death of a parent. We also acknowledge that LSSWIS will not reimburse any costs of the adoption fees or adoption expenses, cost of childcare, medical or legal expenses or any other expenses that we have incurred.

3.4 Once the adoption is complete, we acknowledge that, as legal parents of our child/children, we have full responsibilities to make alternative plans for our child/children should we be unable to continue to parent. LSSWIS will endeavor to provide supportive services and assistance. We further acknowledge that

LSSWIS and its employees, officers, directors, agents, or independent contractors, past or present, are not responsible to take legal or financial responsibility for, or custody, of the above named child/children.

#### 4. PERSONAL INJURY

4.1 As we are required to travel to Russia to adopt our child/children, LSSWIS will assist with travel arrangements, accommodations and translators to the best of its ability. We acknowledge that, despite LSSWIS' and/or its independent contractors' sincere efforts to make all trips trouble free, travel to and within Russia and accommodations there involve meaningful risks of accidental death or injury, intentional crimes, property damage or loss, trip interruptions or cancellation, civil unrest, illness, medical emergencies, a need for medical evacuation and a range of other potential problems that could entail economic losses, pain and suffering, or other injuries or damage that could affect us or the above named child/children.

4.2 We have been informed by LSSWIS of the recommendation to investigate the purchase of insurance for our trip to adopt the above named child/children, where required, to cover some or all of the losses listed previously. We have purchased such insurance or we waive any right to do so. We agree to be personally responsible for any and all costs related to these problems that might occur during the trip. We also specifically waive any claims against LSSWIS, its employees, officers, directors, agents, and independent contractors, past or present, for any losses, pain and suffering, injuries or other damages during our trip, either to us or the above named child/children.

#### 5. DISCLOSURES

5.1 We acknowledge that LSSWIS has provided us with information regarding the risks and rewards of international adoption.

5.2 We acknowledge that the child referral information may be limited or erroneous in general information, parental/family background, genetic information, prenatal care, childbirth, postnatal care, present and past childcare, current physical, emotional, psychological, intellectual and developmental status or previous history.

5.3 We have been advised by LSSWIS and acknowledge that it is our responsibility to seek out whatever medical, developmental and psychological evaluations of the child referral information provided as deemed necessary in order that we are able to make an informed decision as to whether we can accept the referral. We acknowledge that LSSWIS is not able to give medical advice, opinion or explanations of medical issues.

5.4 We acknowledge that if any information we receive or our initial meetings with the above named child/children makes us uncertain about adopting the child/children named above, that we can decline to adopt him/her/them and return home and that is our free and unencumbered right and privilege. If, however, the adoption has already been completed in Russia, we will cooperate fully with any procedure that will be required to dissolve that adoption in Russia.

5.5 We acknowledge that our child/children can arrive with medical, psychological, developmental, emotional, or physical conditions that may have been undiagnosed, misdiagnosed or misstated.

5.6 We agree to adopt the/these child/children named at the beginning of this statement with the knowledge and acceptance of all information contained in the materials provided to us, and all the medical, mental health, family history, environmental issues, or other problems that the child/children may have, now or in the future, known or unknown.

5.7 We specifically waive any claim against LSSWIS, its employees, officers, directors, agents or independent contractors, past and present, for the accuracy, completeness, implications, predictive nature, or other matters, whether known or unknown, regarding information we received prior to the arrival of our child/children to the US, prior to our trip, or that we receive during our trip. We waive any claim should

our child/children develop illness, mental health problems, or other difficulties due to matters that were or were not known or disclosed at the time of his/her/their adoption, and we agree not to sue LSSWIS, its employees, officers, directors, agency or independent contractors, past or present, on behalf of ourselves and our child/children named at the beginning of this statement.

#### 6. GOVERNING LAW/DISPUTE RESOLUTION

6.1 Any and all disputes arising out of or relating to this Agreement shall be resolved in accordance with the procedures as outlined in this Section 6. The substantive law governing any dispute shall be the laws of the State of Wisconsin.

6.2 Either party will give the other party written notice of any dispute not resolved in the normal course of business. The parties shall first attempt, in good faith, to resolve such dispute by negotiation. All such negotiations pursuant to this clause are confidential and shall be treated as such and will not be used by either party in any subsequent proceeding of this matter, or disclosed to any other persons or entities, other than legal counsel for said party.

6.3 Any dispute which has not been resolved within sixty (60) days of the notice specified in 6.2, shall be settled by arbitration in accordance with the then current commercial arbitration rules of the American Arbitration Association (AAA) as a sole arbitrator. The place of arbitration shall be the LSSWIS offices in Eau Claire, Wisconsin. The decision rendered by the arbitrator shall be final, and the judgment may be entered upon the award by any court having jurisdiction.

\_\_\_\_\_  
Signature of Adoption Bureau

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Adoptive Parent

\_\_\_\_\_  
Date